

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

**Directions:** Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

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| <b>Appeal No. &amp; Caption</b>      | 23-2133 Bailey v. Mercury Financial, LLC         |
| <b>Originating No. &amp; Caption</b> | 8:23-cv-00827 Bailey v. Mercury Financial, LLC   |
| <b>Originating Court/Agency</b>      | U.S. District Court for the District of Maryland |

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| <b>Jurisdiction</b> (answer any that apply)  |                           |                                     |
| Statute establishing jurisdiction in Court of Appeals  | 9 U.S.C. § 16             |                                     |
| Time allowed for filing in Court of Appeals  | 30 days                   |                                     |
| Date of entry of order or judgment appealed  | 09/26/2023                |                                     |
| Date notice of appeal or petition for review filed   | 10/24/2023                |                                     |
| If cross appeal, date first appeal filed   |                           |                                     |
| Date of filing any post-judgment motion  |                           |                                     |
| Date order entered disposing of any post-judgment motion   |                           |                                     |
| Date of filing any motion to extend appeal period  |                           |                                     |
| Time for filing appeal extended to   |                           |                                     |
| Is appeal from final judgment or order?  | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| If appeal is not from final judgment, why is order appealable?<br>It is an order denying a motion to compel arbitration, which is appealable under 9 U.S.C. section 16(a). |                           |                                     |

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| <b>Settlement</b> (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.) |                                      |                          |
| Is settlement being discussed?   | <input checked="" type="radio"/> Yes | <input type="radio"/> No |

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| <b>Transcript</b> (transcript order must be attached if transcript is needed and not yet on file) |                           |                                     |
| Is transcript needed for this appeal?   | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Has transcript been filed in district court?  | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Is transcript order attached?   | <input type="radio"/> Yes | <input checked="" type="radio"/> No |

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| <b>Case Handling Requirements</b> (answer any that apply)   |   |                                     |
| Case number of any prior appeal in same case  |   |                                     |
| Case number of any pending appeal in same case  |   |                                     |
| Identification of any case pending in this Court or Supreme Court raising similar issue   | See below   |                                     |
|   | If abeyance or consolidation is warranted, counsel must file an appropriate motion. |                                     |
| Is expedited disposition necessary?   | <input type="radio"/> Yes   | <input checked="" type="radio"/> No |
|   | If yes, motion to expedite must be filed.   |                                     |
| Is oral argument necessary?   | <input checked="" type="radio"/> Yes  | <input type="radio"/> No            |
| Does case involve question of first impression?   | <input checked="" type="radio"/> Yes  | <input type="radio"/> No            |
| Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party | <input type="radio"/> Yes   | <input checked="" type="radio"/> No |
|   | If yes, notice re: challenge to constitutionality of law must be filed.             |                                     |

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| <b>Nature of Case</b> (Nature of case and disposition below. Attach additional page if necessary.)   |
| <p>The complaint in this case is a putative class action brought by a consumer against credit card servicing companies, alleging violation of Maryland licensing law. The defendant moved to compel arbitration because the cardholder agreement between the issuing bank and plaintiff calls for arbitration. The plaintiff argued that the cardholder agreement was illusory and no contract was ever formed because the contract gave the defendant the right to amend the contract with notice only "as required by law." The court agreed with the plaintiff and denied the motion to compel arbitration.</p> |

**Issues** (Non-binding statement of issues on appeal. Attach additional page if necessary)

The issue on appeal is whether the district court erred by denying the motion to compel arbitration. Properly viewed, the contract is enforceable, and in any case, the question of whether the provisions requiring arbitration are enforceable should have been sent to the arbitrator in the first instance.

Currently pending in this court, cases 23-2047 and 23-2049 present the same issue. Those cases have all separate parties from this case, and were decided by a different district judge in different case numbers in the District of Maryland. The court in this case agreed with and followed the rulings on appeal in 23-2047 and 23-2049.

**Adverse Parties** (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

Adverse Party: Angelita Bailey

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Address: Gordon, Wolf & Carney  
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Adverse Party: Angelita Bailey

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**Adverse Parties (continued)**

Adverse Party:

Attorney:

Address:

E-mail:

Phone:

Adverse Party:

Attorney:

Address:

E-mail:

Phone:

|  |   |
|--|---|
| <b>Appellant</b> (Attach additional page if necessary.)  |   |
| Name: Mercury Financial, LLC<br><br>Attorney: Matthew A. Fitzgerald<br>Address: McGuireWoods LLP<br>Gateway Plaza<br>800 East Canal Street<br>Richmond, VA 23219<br><br>E-mail: mfitzgerald@mcguirewoods.com<br><br>Phone: (804) 775-4716  | Name: Mercury Financial, LLC<br><br>Attorney: Melissa O. Martinez<br>Address: McGuireWoods LLP<br>500 East Pratt Street, Suite 1000<br>Baltimore, MD 21202<br><br>E-mail: mmartinez@mcguirewoods.com<br><br>Phone: (410) 659-4432 |
| <b>Appellant (continued)</b>   |   |
| Name:<br><br><br>Attorney:<br>Address:<br><br><br>E-mail:<br><br>Phone:  | Name:<br><br><br>Attorney:<br>Address:<br><br><br>E-mail:<br><br>Phone:   |
| <b>Signature:</b> <u>/s/ Matthew A. Fitzgerald</u> <b>Date:</b> <u>11/3/2023</u><br><br><b>Counsel for:</b> <u>Appellant</u>   |   |
| <b>Certificate of Service</b> (required for parties served outside CM/ECF): I certify that this document was served on _____ by <input type="checkbox"/> personal delivery; <input type="checkbox"/> mail; <input type="checkbox"/> third-party commercial carrier; or <input type="checkbox"/> email (with written consent) on the following persons at the addresses or email addresses shown: |   |
|  |   |
| Signature:   | Date:   |